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10/807,041	03/23/2004	Joseph K. Garretson	12,584	2721

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EXAMINER

LE, HUYEN D

ART UNIT	PAPER NUMBER
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2646

DATE MAILED: 08/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/807,041

Applicant(s)

GARRETSON, JOSEPH K.

Examiner

HUYEN D. LE

Art Unit

2646

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 31 January 2005.  
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-10 and 12-24 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1,2,4-10 and 12-24 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.  
5) ☐ Notice of Informal Patent Application (PTO-152)  
6) ☐ Other: \_\_\_\_\_.

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***Allowable Subject Matter***

1. The indicated allowability of claims 10 and 22 is withdrawn in view of the newly discovered reference(s) to Stastny (U.S. patent 4,817,163). Rejections based on the newly cited reference(s) follow.

***Double Patenting***

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 1-2, 4-10 and 12-24 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 5-15 of copending Application No. 10/851,420. Although the conflicting claims are not identical, they are not patentably distinct from each other because the limitations of claims 1 and 5-15 of copending Application No. 10/851,420 cover the limitations of claims 1-2, 4-10 and 12-24 in the present invention.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

***Claim Objections***

4. Claim 18 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form.

Claim 18 does not include a further limitation from claims 1, 7, 8 and 15.

***Claim Rejections - 35 USC § 112***

5. Claims 6 and 9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is not clear the dependency of claims 6 and 9 since these claimed depend from the canceled claim 3.

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1, 2, 4, 5, 7-8, 15-20 and 23-24, as broadly claimed, are rejected under 35 U.S.C. 102(b) as being anticipated by Edwards et al. (U.S. patent 3,902,015).

Regarding claims 1-2, 4 and 18-19, Edwards teaches a loudspeaker assembly that includes a speaker diaphragm (78, figures 2), and a spinner (10, 28, 30, 32, 34, 36, 42, 86, 87 figures 1-3) defining sound wave passing through openings as claimed (figure 2). The spinner comprises a hub (30, 86, 87) and the spaced apart arms (34, 42). Further, Edwards shows a drive (36) that rotates the spinner as claimed.

As broadly claimed, Edwards teaches the drive that rotates the spinner at a speed causing audible modulation of the sound waves passing through openings formed between spinner arms (figures 1 and 3).

Regarding claim 5, as broadly claimed, Edward shows an electric motor (96, 100) that is constructed between the speaker diaphragm (78) and the hub structure.

Regarding claims 7 and 20, Edward shows a front plate (72) that defines an aperture in alignment with the openings as claimed (figure 2).

Regarding claims 8, 15 and 24, Edward shows an interior support (81, 100) carried by the plate (72) and carrying a spinner drive, and a mounting ring (70, 94) as claimed.

Regarding claims 16-17 and 23, Edwards teaches a loudspeaker assembly that includes a speaker diaphragm (78, figures 2), a rotary drive (36, 96, 100) and a spinner (10, 28, 30, 32, 34, 42 figures 1-3) defining sound wave passing through openings and rotating at a rate as claimed (figure 2).

### ***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 1, 2, 4, 5, 7-8, 12-21, and 23-24, as interpreted in a different manner, are rejected under 35 U.S.C. 103(a) as being unpatentable over Edwards et al. (U.S. patent 3,902,015).

Regarding claims 1-2, 4 and 18-19, Edwards teaches a loudspeaker assembly that includes a speaker diaphragm (78, figures 2), and a spinner (10, 28, 30, 32, 34, 36, 42, 86, 87 figures 1-3) defining sound wave passing through openings as claimed (figure 2). The spinner comprises a hub (30, 86, 87) and the spaced apart arms (34, 42). Further, Edwards shows a drive (36) that rotates the spinner as claimed.

As interpreted in a different manner, Edwards does not specifically disclose that the drive rotates the spinner at a speed as claimed. However, Edwards does not restrict to any speed for the drive to rotate the spinner.

Therefore it would have been obvious to one skilled in the art to provide any speed for rotating the spinner of Edwards such as the speed that causes the arms to discernibly and audibly modulate sound waves for providing improved or desired frequency characteristics.

Regarding claim 5, as broadly claimed, Edward shows an electric motor (96, 100) that is constructed between the speaker diaphragm (78) and the hub structure.

Regarding claims 7 and 20, Edward shows a front plate (72) that defines an aperture in alignment with the openings as claimed (figure 2).

Regarding claims 8, 15 and 24, Edward shows an interior support (81, 100) carried by the plate (72) and carrying a spinner drive, and a mounting ring (70, 94) as claimed.

Regarding claims 12-13 and 21, Edwards teaches a loudspeaker assembly as mentioned above in paragraph 3. Edwards further shows the arms (34, 42) and lacks the teaching of varying widths along arm lengths as claimed. However, it would have been obvious to one skilled in the art to provide any widths for the arms (34) such as varying widths along arm lengths which extend generally for better accommodating the size of the shaft and better passing the sound waves in the sound path.

Regarding claim 14, Edwards shows a drive (36, 96, 100) that rotates the spinner as claimed.

Regarding claims 16-17 and 23, Edwards teaches a loudspeaker assembly that includes a speaker diaphragm (78, figures 2), a rotary drive (36, 96, 100) and a spinner (10, 28, 30, 32, 34, 42 figures 1-3) defining sound wave passing through openings and rotating at a rate as claimed (figure 2).

As interpreted in a different manner, Edwards does not specifically disclose that the drive rotates the spinner at a speed as claimed. However, Edwards does not restrict to any speed for the drive to rotate the spinner.

Therefore it would have been obvious to one skilled in the art to provide any speed for rotating the spinner of Edwards such as the speed that causes the arms to discernibly and audibly modulate sound waves for providing improved or desired frequency characteristics.

10. Claims 1, 7, 8, 10, 15, 18 and 21-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stastny (U.S. patent 4,817,163).

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Regarding claim 1, 10, 18, 21 and 22, Stastny teaches a loudspeaker assembly that includes a speaker diaphragm (2, 18), and a spinner (4, 22, 25, 30, 31) to rotate in the path of sound waves produced by the speaker diaphragm and defining sound wave passing through openings in the sound path as claimed (figures 1 and 3).

Stastny teaches the spinner that comprises a hub (25, 31), a drive (9, 11), and lacks the teaching of the spaced apart arms as claimed.

However, Stastny does not restrict to any shape or configurations for the plates (3, 4, 22, 23, also see col. 2, lines 5-9, lines 65-68 through 3, lines 1-7).

Therefore, it would have been obvious to one skilled in the art to provide any shape or configurations for the spinner or the plate (4, 22) such as the plate that comprises a plurality of space arms, the arm having varying widths along arm lengths and includes braces for the desired purpose of better providing the openings to allow the sound waves to leave the speaker.

Further, Stastny does not specifically teach that the drive rotates the spinner at a speed as claimed. However, Stastny does not restrict to any speed for the drive (9, 11) to rotate the spinner (4, 22).

Therefore it would have been obvious to one skilled in the art to provide any speed for rotating the spinner (4, 22) of Stastny such as the speed that causes the arms to discernibly and audibly modulate sound waves for providing improved or desired frequency characteristics.

Regarding claim 7, Stastny shows front plate (not numbered, see the front plate of the housing 1 in figures 1 and 3) that defines an aperture in alignment with the openings and the diaphragm.



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Regarding claim 8, Stastny shows an interior support (not numbered, also see the speaker frame in figures 1 and 3) that is carried by the plate of the speaker housing (1) and carries the drive as claimed.

Regarding claim 15, Stastny shows a mounting ring (6, 7) carrying the support and carried by the front plate as claimed (figure 3).

### ***Response to Arguments***

11. Applicant's arguments filed 01/31/05 have been fully considered but they are not persuasive.

Responding to the arguments about the allowability of claim 12, the Applicant should note that the Examiner has indicated the allowable subject matter for claim 22, not 12 as mentioned in the Remarks. Claim 12 was rejected under 35 U.S.C. 103 (a) over Edwards et al. (see the Office Action mailed 11/17/2004).

### ***Conclusion***

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to HUYEN D. LE whose telephone number is (571) 272-7502. The examiner can normally be reached on 9:30AM-6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, SINH TRAN can be reached on (571) 272-7564. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



HL  
August 7, 2005



HUYEN LE  
PRIMARY EXAMINER